Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of **National Exchange Carrier Association Inc.** **Tariff FCC No. 5** **Transmittal No. 952**	))))))))	**WC Docket No. 02-356**

AT&T CORP.
OPPOSITION TO DIRECT CASE

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AT&T CORP. OPPOSITION TO DIRECT CASE

Pursuant to the Investigation Order ("*Investigation Order*") in this matter released on November 8, 2002, by the Chief of the Pricing Policy Division, AT&T Corp. ("AT&T") hereby submits its Opposition to the Direct Case filed by The National Exchange Carrier Association, Inc. ("NECA") on December 2, 2002 ("Direct Case").

I. INTRODUCTION AND SUMMARY

In this proceeding, NECA seeks to impose a *thousandfold* increase – from 15 *thousand* dollars to 15 *million* dollars – to the component of its traffic sensitive revenue requirement related to uncollectibles, resulting in a rate increase of over 2 percent for *all* access customers, not merely those that present serious risks of non-payment. The purported basis for this mid-period modification is that NECA projects a rise in its uncollectible amounts to what it has called "unprecedented" levels. But the facts in this proceeding show that NECA carriers – like other incumbent LECs – enjoy very low levels of bad debt expense, particularly when compared to the monopoly revenues they collect for providing access services. Indeed, NECA carriers' uncollectibles have generally been far less than one percent of revenues, lower even than the levels experienced by other incumbent LECs. And the evidence here also shows that any recent increases in uncollectibles are due to temporary and non-recurring events, such as the general downturn in the economy and the bankruptcies of WorldCom and Global Crossing, which were apparently triggered by massive accounting fraud. NECA nonetheless has created an "estimate" of its future uncollectibles, and claims that it will incur $15 million of uncollectibles in expense – about 2.1% of revenues, a far higher percentage than NECA has ever before experienced. Not surprisingly, that inflated estimate is rife with methodological flaws, and is based on, for example, unrealistic assumptions that the rate of default among carriers will continue at extraordinarily high levels and that NECA carriers will collect nothing in bankruptcy proceedings. Because NECA has not shown that its future risk of uncollectibles will in fact rise to the extreme levels that it projects, there is no basis for the Commission to grant NECA's request for a rate increase.

Further, even if NECA had shown some measurable increase in costs due to risks of future uncollectibles, it plainly has not demonstrated that its proposed increase (or, indeed, any increase) to the revenue requirement is necessary to provide NECA with its allowed rate of return. To the contrary, NECA has consistently earned in excess of its 11.25% allowed return, and is on course to do so yet again this year.

The reality is that NECA carriers, like other incumbent LECs, are already adequately protected from non-payment risks by existing tariff provisions that allow NECA to extract security deposits from carriers that have no established credit or that have a proven history of non-payment. There is, accordingly, no reason to grant NECA's rate increase or to adopt any other alternative proposal to address non-payment risks – including NECA's additional tariff transmittal (WC Docket No. 02-356) proposing to give NECA carriers new and broad authority to demand security deposits from many more of its captive access customers. In particular, any proposal to allow advance billing of switched access for *all* customers, without regard to the customer's actual risk of non-payment, would be far too draconian a solution to the problem alleged by NECA. It would result in a serious mismatch of long distance carriers' access expenses, which would be billed in advance, versus their revenues, which can only be collected after services are rendered. Similarly, NECA's proposal to place into an escrow account the revenues associated with its proposed rate increase is burdensome and creates a system to mitigate only those forecasting errors associated with uncollectible expense, which unfairly favors NECA carriers over their customers. On the other hand, the existing tariff protections have been in place since 1984, have worked in good and bad economic times, and are sufficient to address the risks presented by non-payment of access charges.

II. NECA HAS NOT DEMONSTRATED ANY MATERIAL INCREASE IN THE RISK OF UNCOLLECTIBLES.

NECA claims that its rates should be increased because the "telecommunications market has changed" and is now "highly risky," so that there is a "permanent[]" and "profound increase" in the risk of uncollectibles to NECA carriers. Direct Case, Exh. A at 2, 4, 5, 14. These hyperbolic claims are demonstrably false. NECA provides *no* evidence that its access service business has become more risky, because the reality is quite different. In fact, NECA has not demonstrated that its uncollectibles expense – particularly as a ratio of its rapidly increasing access revenues – has risen to unprecedented levels. To the contrary, for the NECA carriers, uncollectibles expense as a percentage of revenues remains remarkably low. NECA certainly has not shown that the recent fluctuations in its uncollectibles expenses are especially volatile or the result of some long-term trend, rather than reflective of general economic business cycles. And NECA's claims of crisis arising from the bankruptcy filings of certain carriers is equally exaggerated: as NECA's direct case makes quite clear, virtually all of the asserted increases in 2002 bad debt expense for NECA carriers relate to the Global Crossing and WorldCom bankruptcies – which are unique and non-recurring events precipitated by allegations of massive accounting fraud designed to fool investors and creditors. Excluding these abnormal events, it is evident that the bankruptcy claims and bad debt expense for NECA carriers in 2002 are no more significant than in past years. And bad debt expense has had no negative effect on the bottom line for NECA carriers: the rates of return earned by NECA carriers over the last few years have been quite stable and at or even above the prescribed rate of return, confirming that NECA retains monopoly control over access markets and thus faces little risk of eroding revenues.

A. NECA Carriers' Uncollectibles Are Small Relative To Revenues, And Have Not Varied Substantially Over Time.

NECA's proposed tariff revisions are plainly unsupported because NECA has not even shown that NECA carriers are experiencing any significant and sustained increase in its uncollectibles expenses. NECA's claims (Exh. A at 4) that NECA carriers face a "profound increase" in risk of bad debt expense from interstate access services are simply misleading. In fact, the bad debt levels experienced by NECA carriers, like those of other dominant LECs, remain very small in comparison to revenues. Moreover, the levels of uncollectibles fluctuate from year-to-year, depending on a number of factors, including general economic conditions and the particular LEC's efficiency in collecting bad debts. The recent increases in bad debt levels experienced by NECA carriers reflect business cycle fluctuations and other temporary events, and not any permanent trend that substantially increases the *future* risks of nonpayment.

The principal data that NECA provides in response to the *Investigation Order*'s requests (¶ 9) for NECA carriers' uncollectibles levels is a chart that lists the absolute amount of interstate uncollectibles expense for the NECA pool from 1990 to 2002. Direct Case, Exh. A at 4. Based on this chart, NECA asserts that uncollectibles have increased to a level that is unprecedented in its history. *See Investigation Order* ¶ 4. However, NECA's data, and especially its claims about that data, are highly misleading, for a number of reasons.

Most significantly, NECA provides only the absolute amount of interstate uncollectibles, but inexplicably fails to compare those figures to its interstate access revenues, which have also increased substantially. The relevant measure of uncollectibles expense is, of course, the *percentage* of revenues that is uncollectible. As shown in the following table, the uncollectibles ratios (uncollectibles expense divided by interstate access revenues) for NECA carriers are quite small, and have *never* exceeded even a quarter of one percent of revenues.

Interstate Uncollectibles Data For NECA Carriers
Traffic Sensitive Pool
As A Percentage of Interstate Revenues
1993-2001[1] Table 1

FCC Moni-toring Period	Interstate Access Uncollectibles (000s)	TS Pool Interstate Revenues (000s)	Uncollectible Ratio
1993-1994	$2,821	$3,093,452	**0.0912%**
1995-1996	$1,937	$2,793,603	**0.0694%**
1997-1998	$2,365	$3,381,741	**0.0699%**
1999-2000	$3,079	$3,359,924	**0.0916%**
2001 (Prelim)	$2,863	$1,987,686	**0.1440%**

As these figures confirm, NECA carriers are not suffering from any bad debt "crisis." Their level of uncollectibles is low by any measure.[2] Indeed, NECA admits that its uncollectibles have been "de minimus." Direct Case at 10. And the mere fact that there have been

[1] Sources are FCC 492 forms and Uncollectibles Data submitted by NECA at page 4 of Exhibit A of the Direct Case, as adjusted.

[2] Indeed, even using NECA's own data, it is evident that, as recently as the year 2000, the *absolute* amount of uncollectibles for NECA pool carriers decreased. Direct Case, Exh. A at 4.

fluctuations in the year-to-year levels of uncollectibles expense cannot justify any tariff revisions. NECA carriers' uncollectibles expenses have always fluctuated over time. Such fluctuations are entirely normal and are the result of a variety of factors, such as general economic conditions and the NECA carriers' efficiency at collecting their debts. And, as described below, these overall levels of bad debt expense have still had no cognizable negative impact on the ability of NECA carriers to earn just and reasonable returns – indeed, the NECA carriers have typically exceeded their authorized rate of return on access services. Because the NECA carriers have not experienced any material change in their uncollectible ratios, there is no need for NECA's proposed rate increase.

As NECA's initial tariff filing (but not its Direct Case) pointed out, any recent increase in uncollectibles for NECA carriers or other incumbent LECs is due almost entirely to the bankruptcy filings of two carriers, WorldCom and Global Crossing.[3] Apart from these bankruptcies, the amounts of absolute uncollectibles are generally quite small. Those bankruptcies have been linked to massive and unprecedented instances of accounting improprieties. It would obviously be improper to permit a rate increase that will affect all customers because of such aberrations that are unlikely to be repeated, given the serious tightening of accounting and related regulation by the Securities and Exchange Commission and other regulators. The *Investigation Order* seeks to determine whether NECA can demand

[3] NECA, Inc., Description & Justification at 1, Transmittal No. 952, *Tariff FCC No. 5* (filed Aug. 30, 2002) (NECA's re-assessment of uncollectibles was caused by the "recent bankruptcies of Global Crossing Ltd. and WorldCom, Inc."); *cf. Investigation Order* ¶ 8. In its Direct Case, by contrast, NECA attempts to disclaim that its rate increase is based on costs associated with the Global Crossing or WorldCom bankruptcy proceedings. Direct Case at 3, 10 ("the $15 million cannot be attributed to any specific customers").

higher rates from remaining *viable* carriers. If anything, the downfall of MCI WorldCom and others should strengthen the remaining viable carriers who will inherit additional customers.[4]

B. NECA's Projections Of Future Uncollectibles Are Exaggerated.

Given this evidence that uncollectibles remain low, NECA's request for a mid-period rate increase, at bottom, is not premised on past bad debt expense or unusual expenses associated with bankruptcy filings by particular carriers. Rather, the basis for NECA's requested rate increase is its "projection" that uncollectibles will rise in the future. *See* Direct Case at 3. Given the central importance of this projection, the *Investigation Order* required NECA to provide a complete "quantitative analysis of uncollectible amounts from a historical perspective, as well as an analysis of current telecommunications market conditions." *Investigation Order* ¶ 8. Then, the *Investigation Order* directed NECA to "provide all internal and external studies created or relied upon to make the estimates or evaluation of risk assessment." *Id.*

In response, NECA provides a single page exhibit to explain how it determined that the uncollectibles component of its traffic sensitive revenue requirement would increase a thousandfold to 15 million dollars. *See* NECA Direct Case, Exh. B. That exhibit explains that NECA examined a single report prepared by Moody's Investor Services. The report, in turn, stated that the 2001 default rate for all companies that Moody's examined was 10.2 percent, which was "more than two standard deviations from the mean for only the second time since 1980." *Id.* NECA nevertheless determined that the default rate would be even higher in the

[4] Moreover, as described in the declaration of Professor Bradford Cornell that AT&T has previously submitted in other proceedings, the claims made by NECA regarding bankrupt carriers tend to show that bad debt expense will generally *not* be occurring in the future. *See* Cornell Decl., ¶¶ 16-17, attached to AT&T Corp. Opposition to Direct Case, WC Docket No. 02-319, *In the Matter of Ameritech Cos., Tariff FCC No. 2, Transmittal No. 1312, et al.* (filed Nov. 14, 2002) ("Cornell SBC Tariff Investigations Dec.").

2002/03 period, and therefore NECA "selected a default rate of about 11 percent." *Id.* NECA then multiplied that figure by its projected interstate traffic sensitive access revenues for the test period ($712 million). *Id.* It then estimated uncollectibles by assuming that, for each carrier that defaults, NECA carriers would lose a full 70 days of revenue, resulting in an uncollectibles estimate of $15 million. *Id.*[5]

NECA's "quantitative analysis" supporting its projected uncollectibles estimate is significantly flawed, leading to a gross exaggeration of projected uncollectibles, and should be given no weight. To begin with, nothing – apart from sheer conjecture – supports NECA's selection of an 11 percent default rate for the test period. That is *higher* than the 2001 default rate, which itself was one of the highest that Moody's had ever recorded. As explained above, there is ample basis to believe that defaults will decrease. In fact, Moody's itself predicted that the default rate for *speculative* grade companies would decline significantly in 2002, falling to 6.8%.[6] NECA never explains why it believes uncollectibles will continue to occur at unprecedented levels – an omission that is astounding given the significant evidence that default rates and uncollectible levels invariably fluctuate with the business cycle, and thus presumably will *not* increase in the manner NECA projects.

Further, NECA's analysis improperly assumes that its carriers will collect *nothing* for a full 70 days from *all* defaulting carriers. The only basis for that assumption is that some NECA

[5] In other words, 19.2% (70 days of 365) of the yearly revenue projections for 11% of access customers would not be collected.

[6] *Id.* Moreover, even the 6.8% default rate is too high, because it applies to companies rated by Moody's as speculative grade. Of course, many of the NECA carriers' access customers are not speculative grade, but are rated at less risky levels. And NECA has requested the authority to request security deposits from carriers with speculative grade ratings and even many with investment grade ratings. If it obtains that relief (or even a more limited ability to gain additional security deposits), NECA's estimates will become all the more inflated. *See infra*.

carriers reported that they had 70 days of outstanding payments from WorldCom when it declared bankruptcy. *See* Direct Case, Exh. B at 1 n.7. But NECA fails to show that a 70 day payment exposure is typical for all defaulting carriers. And even if 70 days of outstanding charges were typical for a carrier filing for bankruptcy, NECA also fails to explain why NECA carriers will not ultimately collect much or at least some of these amounts in bankruptcy proceedings.[7]

In the end, all of these faulty and unexplained assumptions lead to an estimate of uncollectibles which is substantially inflated. Assuming NECA's revenue projections are accurate, the $15 million uncollectibles projection equates to an uncollectibles ratio of than 2.1% of revenue – which is far in excess of anything NECA has ever experienced. NECA provides no basis to credit its claims that its bad debt expense and uncollectibles ratio will increase by a thousandfold.

Beyond these errors in its uncollectibles projections, the "analysis" that NECA provides in response to the request in the *Investigation Order* for NECA to support its claims that its uncollectibles expense will increase dramatically is flimsy and speculative. NECA refers to a few articles that it provided in its related security deposit investigation proceeding which contain the opinions and predictions of various investment companies or consultants. *See*

[7] And in fact, by virtue of their status as dominant suppliers of access, NECA carriers have a superior position that makes it more likely to obtain recovery of bankruptcy claims. A bankrupt entity's executory contracts can be assumed and assigned pursuant to 11 U.S.C. §§ 365(b)(1) and (f)(1) if the debt associated with such contracts is cured, or paid. Because the ILECs' access services are typically the only option available, a company emerging from bankruptcy or a company acquiring all or part of a bankrupt entity will often seek to assume the existing ILEC access services. In that instance, as a condition for the assumption and assignment of the access services, the bankruptcy code provides for payment of both the pre-petition and post-petition claims. Thus, there is no basis to presume that NECA will not ultimately obtain payment for significant amounts of access it has claimed in bankruptcy proceedings.

Direct Case at 4; NECA Direct Case, WC Docket No. 02-340, Exh. D. These articles do not amount to a convincing or coherent analysis of the market supporting NECA's uncollectibles projections – indeed, they say almost nothing about uncollectibles. The first (by RHK) claims that carriers emerging from bankruptcy may be able to offer lower prices than now-viable carriers (apparently so significant that it will trigger additional bankruptcies). That article is contradicted by the second (by Precursor), which claims it "has found little actual evidence" that bankrupt carriers will be "financially capable of pricing disruptively." *See id.* That article also claims that there are "emerging signs of long-term stabilization," which is consistent with the view that bad debt expense fluctuates with the business cycle. These articles simply do not provide any basis to presume, as NECA does, that its bad debt expense will continually worsen and cannot be controlled with existing deposit provisions. *See also supra* Part I.A & n.4 (explaining that bankruptcies may strengthen remaining carriers, making uncollectibles lower).

In particular, neither these articles nor anything else in NECA's Direct Case provide a credible and convincing response to the request of the *Investigation Order* to explain the basis for NECA's belief that "the risk of uncollectible debts has increased permanently," and to show that any change in bad debt is due to "some structural change in the market," and not a mere temporary downturn in "the general economic climate." *Investigation Order* ¶ 12. Although NECA claims that the financial position of "all of the largest" long distance providers has deteriorated recently (Direct Case at 4) – a claim that is not supported by the Precursor article that NECA cites – NECA never shows that these changes are likely to create a permanent shift in NECA carriers' exposure to bad debts. In fact, in the Direct Case NECA submitted in the security deposit investigation and that NECA cites here (*id.*), NECA admits that a primary factor affecting access customers is not any permanent structural change, but simply "the general downturn of the economy." *See* Direct Case, Exh. A at 14.[8] Because any recent increase in bad debt expense is most likely due to short-term economic factors, there is no basis to credit NECA's severely inflated estimates that its uncollectibles will continue to increase throughout the test period.

NECA's transmittal is also unreasonable because, although NECA purports to justify it by pointing to problems posed by customers that in the future may be unable to pay, its tariff revisions at issue here are not directed at bankrupts or even at deadbeats, but at *all* ratepaying access customers, even those with impeccable credit. Even if NECA carriers and other large incumbent LECs could show truly increased levels of bad debt expense, this transmittal does not represent a limited, specified, and reasonable measure to recover the costs of bad debt caused by customers that can be demonstrated, by objective criteria, to present actual and unusual risks of nonpayment. In this regard, NECA's transmittal requesting authority to demand additional security deposits from certain access customers at least *purported* to apply to a limited subset of customers. This rate increase proposal removes any such pretense and openly seeks to require all customers to pay increased rates. That result would be unreasonable even if the non-payment risks faced by NECA carriers were substantial. But because NECA has provided no evidence of any actual bad debt crisis, this transmittal will simply result in increased rates for customers, and higher rates of return for NECA carriers.

C. The NECA Transmittal Is Unnecessary To Allow NECA To Meet Its Rate Of Return.

[8] NECA claims that its some of its larger customers will suffer lower profits due to competition from, *inter alia*, "cellular carriers" and from "RBOCs entering the long distance market," *id.*, but even assuming that is true, the increase in market share of those carriers should have no effect on NECA carriers' access revenues or their ability to collect those revenues. Such carriers will continue to purchase access that might otherwise have been bought by existing landline IXCs.

Even if NECA could show some measurable increase in its bad debt exposure, that would still be insufficient to justify its huge revenue requirement increase. That is because NECA provides *no* evidence that it will not collect revenues sufficient to achieve an 11.25% rate of return. Indeed, the evidence shows that NECA will likely (once again) overearn.

On June 17, 2002, NECA filed its 2002 annual interstate access tariff filing (Transmittal No. 939), which provided supporting information for its projected revenue requirements, demand and traffic sensitive and common line access rates for the prospective July 1, 2002 through June 30, 2003 tariff period. At that time, NECA asserted that it had, in fact, precisely produced a set of rates that would yield an 11.25 % rate of return for the prospective tariff period.[9] Only a few weeks later, NECA filed the current tariff transmittal requesting a rate increase, asserting that its prior projection of bad debt costs was off by millions of dollars, and that it must increase rates to ensure that it will achieve a rate of return equal to 11.25 percent.

NECA's entirely unsupported assertion should be rejected. NECA has consistently earned in excess of 11.25%.[10] And for the upcoming period, it is likely that the NECA common line and traffic sensitive pool members will achieve at least an 11.25% rate of return. Indeed, NECA's projected common line revenue requirements are virtually guaranteed.[11] Because common line access revenues constitute approximately 66% of the total NECA

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[9] *See* Reply of NECA, Inc., Transmittal No. 939, *In the Matter of July 2, 2002, Annual Access Charge Tariff Filings, Tariff FCC No. 5*, WCB/Pricing 01-12 (filed June 28, 2002).

[10] As reported in NECA's FCC Form 492 (NECA Tariff Participants) (Sept. 28, 2001 & Sept. 30, 1999), NECA in these monitoring periods (1999-2000 & 1997-1998) reported cumulative overall interstate access returns of 11.81% and 12.28%, and traffic sensitive rates of return of 12.21% and 13.28%.

[11] As NECA notes, any difference between the Common Line Revenues and the Common Line Revenue Requirement will be recovered from Interstate Common Line Support.

revenue requirement[12] and generate the largest dollar return, this revenue guarantee nearly assures that the overall interstate rate of return will exceed 11.25%. Under these circumstances, where the common line revenue requirement almost certainly will earn at least 11.25% and where the traffic sensitive pool has historically exceeded a return of 11.25%, the overall return for the upcoming period will almost certainly continue to exceed 11.25%.

NECA's proposal to implement a 100,000% increase for uncollectibles is all the more arbitrary considering that there is little time remaining in the current monitoring period. Given that short period, the only possible impact of such large rate increases will be to guarantee *further* inflation in its rate of return. Indeed, NECA has already filed a preliminary FCC Form 492 for 2001 reporting interstate earnings of 12.90%.[13] Notwithstanding that fact, NECA has *not* made any reductions in its rates to flow-through these excess earnings – even though the amount of any reductions would surely be significant and in fact would easily dwarf the magnitude of the nearly $15 million increase that NECA currently seeks to implement. Thus, rather than approving tariff changes that allow NECA to further increase its rates (and its rate of return), NECA should instead be required to flow-through its prior overearnings by implementing rate reductions.

D. NECA Carriers Are Adequately Protected From Non-Payment Risks By The Commission's Longstanding Prescription Allowing Security Deposits From Customers With Unusual Risks of Non-Payment.

NECA's existing tariffs contain longstanding, Commission-prescribed language that allows NECA carriers and other incumbent LECs to collect security deposits from customers

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[12] *See* NECA Transmittal No. 939, NECA TRP, 61.38 ACR-1 Projected, Column M.

[13] FCC 492, Rate of Return Report, filed March 29, 2002, reports 12.25% and 13.66% rates of return for common line and traffic sensitive revenues, respectively.

with a poor payment history or with no established credit.[14] Those provisions have protected NECA carriers and other incumbent LECs from non-payment risks for over 15 years – in both good and bad economic times – and they remain more than sufficient today. Given that the level of NECA carriers' interstate uncollectibles was far less than 1 percent in 2001, there is no conceivable need to allow NECA to increase its rates to account for this same risk.

In this regard, NECA provides no satisfactory response to the *Investigation Order*'s request that it explain why it needs not one, but two, additional forms of relief beyond these existing protections. *See Investigation Order* ¶ 7. As the *Order* found, both this rate increase and NECA's other proposal to expand radically NECA carriers' ability to demand security deposits from its access customers "address the same risk" of non-payment, and the *Order* therefore required NECA to explain "why both forms of relief are necessary." *Id.* NECA's response is that, even if it obtains the ability to demand security deposits from more customers, it will still have $15 million in uncollectibles. Direct Case, Exh. A, at 3. That claim simply cannot be true, given the methodology NECA used to estimate the $15 million in uncollectibles. That estimate was expressly based on an assumption that all defaulting carriers would expose NECA carriers to seventy days of unpaid access charges. *See* Direct Case, Exh. B at 1. But if, as NECA has requested, NECA carriers are able to gain security deposits of up to *two months* of charges from a much wider class of access customers, then NECA's assumption of 70 days of exposure to bad debt is unquestionably too high – perhaps by as much as 85 percent. And, because those estimates are flawed for all the other reasons described above, it is likely that the relief NECA seeks with its two tariff transmittals is at best entirely duplicative.

[14] *See* Memorandum Opinion & Order, *Investigation of Access and Divestiture Related Tariffs*, 97 F.C.C.2d 1082, 1168-70 (1984) ("*1984 Access Order*").

The reality is that NECA's existing tariff provisions offer more than sufficient protection against non-payment risks, and that no further relief is necessary, whether in the form of rate increases or additional security deposit authority. To the extent that NECA carriers' uncollectibles are increasing because of customers' weakened financial condition, those existing provisions provide NECA with the ability to demand deposits from customers that are not paying in a timely manner. However, NECA reveals that NECA carriers have used existing security deposit provisions to accumulate only $40,000 in security deposits from carrier customers – a tiny fraction of overall revenues. Direct Case at 7. If the payment ability of access customers has in fact significantly weakened in the manner NECA describes, then it seems likely that NECA carriers could be relying more extensively on the existing tariff provisions to protect against non-payment risks by demanding security deposits from carriers with a proven history of nonpayment. Any additional relief at this juncture is speculative and premature.

1. Advance Billing or Escrow Account Options Are Also Unreasonable.

Given that existing tariff provisions are adequate, the Commission also should refuse to adopt any of the other alternatives suggested by NECA or contained in the *Investigation Order* (¶ 12). Thus, with respect to the two NECA-proposed "options" to establish an escrow account in which to place funds derived from any rate increase, the Commission should not adopts such a system to account for one potential forecast error associated with NECA's mid-course correction filing. Forecast errors surely exist in a variety of aspects of NECA's forecast, not merely uncollectibles expense. However, in almost all cases, it is expected that these forecast errors will have a limited impact on NECA's ability to earn the prescribed rate of return, because NECA typically will "under-forecast" some aspects of the projections and "over-forecast" others. In fact, if anything, NECA traditionally has over-forecasted expenses and under-forecasted revenues, which has caused NECA to earn rates of return in excess of the authorized level. In these instances, the Commission has not attempted to isolate the specific line items of revenue or expense that have not been accurately forecasted to determine why NECA has earned excessive returns. By the same token, there is no reason to isolate the NECA forecast on uncollectibles, and to provide a special procedure that would apply to mitigate forecasting errors for that line item alone. That procedure not only would add unnecessary administrative expense, but also ignores the fact that a variety of forecasting errors may have been made, which could offset any error in underestimating uncollectible expense. By proposing a special procedure for uncollectibles forecasting errors, NECA is in effect designing a change in the rate making process that can only benefit NECA carriers, and never the customers.

It would also be unreasonable to allow NECA to bill in advance all access customers, regardless of the risks of nonpayment, for any switched access services. *See Investigation Order* ¶ 12. As AT&T explained recently in an *ex parte* letter in a related proceeding, such advance billing is unlawful and extremely harmful to the industry and to consumers.[15] Most fundamentally, such an approach is patently overbroad. An advance billing proposal would require even carriers with impeccable payment records to begin paying for access services at least a month earlier. This proposed solution is entirely unresponsive to the alleged problem. According to the NECA, the problem is not that all (or even most) carriers fail to pay for access services in a timely manner. Rather, NECA has claimed that NECA carriers have accumulated growing bad debt expense because a small minority of carriers have been unable to pay for substantial amounts of access services. The advance billing proposal turns the asserted

[15] Letter to Marlene Dortch, FCC, from Michael J. Hunseder, WC Docket No. 02-202 (filed December 9, 2002).

problem on its head, and demands that all carriers suffer the consequences caused by the minority of carriers that are unable to pay for services.

The harm to otherwise financially healthy carriers that would result from this drastic change to allow advanced billing for all access services would be both extensive and profound. Most significantly, advanced billing of switched access service (and other access services billed on the basis of usage) would create a substantial "mismatch" between expense and revenues for interexchange carriers. In virtually all circumstances, IXCs bill their end user customers for usage-based services in arrears. Because IXCs do not collect revenue for such services until well after those services are billed, any proposal allowing ILECs to bill switched access services in advance would mean that IXCs would pay for switched access services far before they can obtain revenue for the services they provide using those switched access services. The financial impact of that mismatch would cause severe harm even to the largest and most financially healthy IXCs.[16]

[16] Moreover, any change to advanced billing for switched access services would cause a whole additional set of costs and would pose substantial administrative burdens for both ILECs and IXCs. One of the very reasons that such services are now billed in arrears is that it is simply too difficult to bill in advance for services that depend on the amount of usage. The intercarrier billing process for access services is already costly and burdensome. Adding a system in which carriers are required to estimate charges for usage-based services, verify the actual amounts used, and then true-up the actual amounts paid imposes another unnecessary layer of complexity.

III. CONCLUSION

For the foregoing reasons, NECA's proposed tariff revisions should be rejected.

Respectfully submitted,

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December 16, 2002

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing AT&T Opposition to Direct Case was served the 16th day of December, 2002, on the following:

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